S.B.Cr.Misc. III Bail App. No. 4954/2007
(Bhikha Vs. State of Rajasthan)

Date of order : 03/10/2007

HON'BLE MR.H.R.PANWAR, J.

Mr. Pradeep Shah for the petitioner.

Mr. V.R.Mehta Public Prosecutor.

Heard learned counsel for the petitioner and public prosecutor for the State. Perused the order impugned.

This is third bail application filed by the petitioner. After rejecting the earlier bail application, statements of material witnesses have been recorded by the trial court.

Shampu is wife of the deceased. She has been examined by the trial court as PW-6.

It is contended by learned counsel for the petitioner that after investigation the police filed challan against the petitioner, Lakha, Mahadeva, Kheta and Smt. Heera and except the petitioner, all have been released on bail by Co-ordinate Bench of this Court. Learned counsel has placed on record the orders passed by Co-ordinate Bench this Court in respect of Lakha and Mahadeva dated 16.10.2006 as also the order dated 16.11.2006 granting bail to accused Kheta. Smt. Heera has earlier been released on bail on 2.8.2006. It is further contended by learned counsel for the petitioner that the allegation against the present petitioner is inflicting the injury on elbow of the

deceased and as per the postmortem report, the cause of death of the deceased is shock due to internal haemorrhage and injuries to vital organ i.e. lungs right, Liver and both Kidney and these injuries have been assigned to Moda and Gheva who have not been charge-sheeted by the police.

On careful perusal of the statement of PW-6 eye witness, it appears that she categorically stated that the petitioner inflicted injury on elbow, Lakha on left leg, Moda on Chest, Gheva S/o Moda on abdomen. The injuries which according to learned counsel for the petitioner proved fatal have been assigned to two persons Moda and Gheva who have not been charge-sheeted by the police and the case of the present petitioner is not distinguishable from that of co-accused Lakha and other accused who have been enlarged on bail. I have also carefully gone through the statement of other eye witness Lachha recorded by the police under Section 161 Cr.P.C. No specific injuries more particularly the fatal injuries have been assigned to the present petitioner. In the circumstances, therefore, looking to the facts and circumstances of the case and the fact that similarly situated co-accused have been released on bail, having considered the oral arguments advanced by both the parties, without commenting on the merit of the case, I think it just and proper to enlarge the accused petitioner on bail.

Accordingly, this bail application filed under Sec. 439 Cr.P.C. is allowed and it is directed that petitioner Bhikha S/o Sh. Moda be released on bail in FIR No. 55/2006 P.S. Karda, district Jalore, provided he executes a personal bond for a sum of Rs. 20,000/- with

two sound and solvent sureties in the sum of Rs. 10,000/- each to the satisfaction of learned trial court for his appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial.

(H.R.PANWAR), J.

RP